

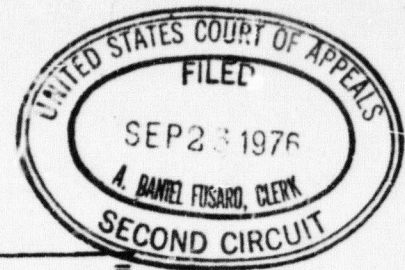
***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT



DONALD SCHANBARGER,

Plaintiff-Appellant,

vs.

DISTRICT ATTORNEY OF RENSSELAER COUNTY,  
DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF  
RENSSELAER COUNTY, SUPERINTENDENT OF THE  
NEW YORK STATE POLICE, EDWARD A. VIELKIND  
and CHARLES P. HASKINS,

Defendants-Appellees.

No. 76-7288

BRIEF FOR APPELLEES DISTRICT ATTORNEY OF  
RENSSELAER COUNTY, DIRECTOR OF DEPARTMENT  
OF MENTAL HEALTH OF RENSSELAER COUNTY,  
EDWARD A. VIELKIND and CHARLES P. HASKINS.

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EDWARD A. VIELKIND and CHARLES P. HASKINS.

Preliminary Statement

This is an appeal by plaintiff from an order of the United States District Court, Northern District, New York (Foley, D.J.), which dismissed his complaint on May 17, 1976.

Statement of the Case

This action is brought under the United States Civil Rights Act 42 U.S.C. 1983 and 28 U.S.C. 1343 seeking to enjoin all appellees from "collecting any information about anyone when information collection and/or distributed about a person against which a criminal conviction fails to prevail, has not been put in such persons' possession."



The second cause of action seeks to permanently enjoin the Rensselaer County District Attorney from any prosecution without posting a peace bond of \$400,000.00.

The third cause of action seeks a permanent injunction against any criminal prosecution by appellee Rensselaer County District Attorney of any person who has been ordered to have a psychiatric examination before trial.

The fourth cause of action seeks a permanent injunction against Rensselaer County Department of Mental Health from giving a psychiatric examination before a criminal trial to any person.

The seventh cause of action seeks compensatory damages of \$6,000.00 and punitive damages of \$40,000 against Appellee Edward A. Vielkind, Rensselaer County Clerk, and Appellee Charles P. Haskins, Supreme Court Clerk.

The eighth cause of action seeks a permanent injunction against Appellees Vielkind and Haskins from conducting their office without posting a performance bond of \$20,000.

#### Statement of the Issue

Does the complaint state a cause of action against the appellees, Rensselaer County District Attorney, Rensselaer County Department of Mental Health, Edward A. Vielkind and Charles P. Haskins.



### Facts

Plaintiff was arrested in 1968 and charged with loitering under then New York State Penal Law, § 240.35, subd. 6.<sup>1</sup> He was convicted after trial and the conviction was affirmed on appeal to the Rensselaer County Court. On further appeal to the New York State Court of Appeals, the conviction was reversed (*People v. Schanbarger*, 24 N Y 2d 288 [1969]). Plaintiff then sued the prosecutor, the police, and a court-appointed psychiatrist in State Supreme Court, Rensselaer County, and received an award of \$5,000 for false arrest against one of the police officers. Causes of action for malicious prosecution, abuse of process, and invasion of privacy were dismissed, as were all causes of action against a second police officer, the prosecutor and the psychiatrist. No judgment has yet been entered in the docket of the Rensselaer County Clerk's office pursuant to this award. Nevertheless the State as the indemnifier of the police officer (Public Officers Law, § 17) has offered to pay plaintiff the damages awarded, but the plaintiff has refused such offer, asserting that he wants to extract his award from the police officer. The plaintiff moved for execution in Supreme Court, Rensselaer County, but his motion was denied, the Court finding

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<sup>1</sup> Subsequently declared unconstitutional in *People v. Berck*, 32 N Y 2d 567 [July, 1973], cert. den. 414 U.S. 1093.



that no judgement had yet been entered. The plaintiff is currently appealing denial of his motion for execution in the Appellate Division. The State's offer of payment is still outstanding.

The plaintiff was subsequently arrested in Albany County and charged and convicted of several offenses. These convictions were reversed on appeal and plaintiff is currently maintaining several actions in State of Federal courts for damages stemming from this latter arrest.

#### ARGUMENT

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST THE DISTRICT ATTORNEY OF RENSSELAER COUNTY, DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY, EDWARD A. VIELKIND and CHARLES P. HASKINS UPON WHICH RELIEF CAN BE GRANTED.

Plaintiff-Appellant alleges a conspiracy among the named defendants. In the first, second, third, fourth and eighth causes of action plaintiff seeks injunctive relief against state and county officials. Such relief is not available pursuant to 42 U.S. CA 1985. In addition plaintiff fails to allege specific acts which would constitute a conspiracy and therefore no relief sought pursuant to Section 1983 of the Civil Rights Act is available.

As to the seventh cause of action seeking money damages for an alleged failure of a county official to perform his duties this is not the proper forum to bring such allegations. There are provisions under New York State Law which provide an adequate remedy if such allegations are proven.



CONCLUSION

DISMISSAL OF THE COMPLAINT SHOULD BE AFFIRMED.

Dated: September 20, 1976

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